

PRESIDENT : Is the motion opposed? As the motion is not opposed it will be put to the vote of the House. The question before the House is whether leave may be granted to introduce the Travancore Agriculturists' Relief Act (Amendment) Bill.

The motion was put to the vote of the House and carried and leave was granted.

THE TRAVANCORE CHILD MARRIAGE RESTRAINT BILL.

PRESIDENT : I find that on the last occasion, Mr. E. Subramonia Iyer just expressed his thankfulness and was about to start with his speech. Mr. E. Subramonia Iyer may begin now.

MR. E. SUBRAMONIA AIYAR : Sir, as I said the other day, I am very much thankful to the honourable members of this Assembly who have been good enough to state their reasons for opposing the amendment put forward by me. So far as I am able to understand them, their complaint seems to be that if my amendment is accepted the Bill might become futile, at any rate the utility of the Bill would be very much diminished. Sir, I regret I am unable to agree with the views of those honourable members who thought it best to oppose the amendment on that ground. So far as the amendment is concerned, taking Section 6, it could be seen if sub-clause (2) is deleted the provision would not be touched in any serious way; only it will make the Section more reasonable and more consistent with our notions of rights and liabilities as understood in civilized jurisprudence. I pray your permission to read Section 6 over again :

"Where a minor contracts a child marriage, any person having charge of the minor whether as a parent or guardian or in any other capacity lawful or unlawful" (relatives are spread very wide) "who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:"

So, so far as this section goes, it not only makes a person liable for his acts but also for defaults. If, as a matter of fact, child marriage is something to be restrained, certainly any person who actually brings about or promotes a child marriage must be punished. Then, a person who permits it to be solemnised may not come under the words actual promotion of the marriage. Therefore, it will cover up those cases which may not come under the actual promotion of the marriage and this term is wide enough for the meaning of the word 'permits' will depend more or less upon the sub-conscious bias of the presiding officer who hears the case. Not satisfied with that, the Legislature wanted to see that an omission to prevent it from being solemnised is made punishable. Well, I do not attack that aspect of the section but when we come to clause, 2 when negligence is to be established, the section says

"For the purpose of this section, it shall be presumed" (not, it may be presumed, because that will not meet the situation) unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised."

It comes to this: well, if a child marriage takes place, or to be more accurate, if a minor contracts a child marriage, then without any further process the parent or the guardian or any other person having charge of the minor can be hauled up before the court and unless he is able to show that there was not negligence in preventing the marriage immediately he becomes subject to the penalty of law. Now if this amendment is accepted how, I ask, is the substance of the provision evaded? How does the act become futile? Well, taking away the proviso, even under Section 6 certainly any person who promotes a child marriage will be liable to punishment. Any one who permits it will also be liable. That is a duty cast on the person in charge of the minor. If the child marriage takes place and if it is proved that he has not taken sufficient care, the care which is expected of him to prevent the marriage, certainly, he will be held liable. The real question is whether the act will be ineffective in the absence of the proviso. To my mind, it appears that if liberty of action should not be completely put an end to, Section 6 is more than sufficient. No doubt, I am aware that there is a tendency at present due to warring ideologies rather due to post-war neurosis, an idea, I say in the so called reformist that they can construct or reconstruct society by what is called legislation. Well, I do not want to say anything about that attitude on the part of such persons. I do not propose to go into those reasons which may have influenced us living under modern conditions to take up a particular view. But this is sufficient answer, I say to the contentions put forward by honourable members that if this proviso goes, the Bill is knocked on the head. That is one objection.

Another objection, or another reason put forward by the honourable members is that unless such a proviso is introduced the parents and guardians will not take sufficient care to prevent such marriages. There also, I may say, I am not quite in agreement with the views propounded by the honourable members. I may assure the honourable members here that so far as that community which will be seriously affected by this piece of legislation is concerned, it will be long before the germ of disobedience of law may find place in them. (Hear, hear). And we may fight with all the vehemence and with all the force which we can command only metaphorical fight the imposition of a legislation upon us which is not in conformity with our tradition and culture which will, we believe whether rightly or wrongly, jeopardise the foundations of our culture. But, in spite of that, if the law is passed, certainly as preachers of *Dharma* and as persons who follow *Dharma*, I may assure you that no Brahmin, if he deserves the name of a Brahmin will preach or adopt a policy of disobedience or breach of law. So, all these measures must not be taken for purposes of safeguarding the Brahmin against any temptation to break the law. Further, if you are going to make a law, unless there is absolute necessity, we should not depart from accepted notions in civilised jurisprudence. In fact, what is attempted here in this proviso is a presumption rather a conclusive presumption for purposes of imposing a criminal liability. Now certainly, in law I know progress is made by presumptions as well as by fiction;

I am fully aware of that, but relying upon presumptions as well as fiction, still, there should be consistency or a system in that method. We do not draw a presumption in law or build a presumption if there is not a solid fact to support it. For example, under Section 372, I believe, or 373 of the Penal Code, there is a section which has been enacted for purposes of safeguarding sexual purity, or preventing, so to speak, prostitution, selling or disposing of a minor for an illegitimate purpose. Now, in that section there is an explanation added: namely, the selling or disposing of a minor to the keeper of a brothel will be deemed to be a sale as contemplated by that section. That I can understand. There, the presumption is good and right, I would say, because there is the fact that the sale of the minor or the disposal of the minor is to a brothel keeper and therefore any person, any sane person will be able to see that the purpose of the sale cannot be for anything else. So the law rightly had drawn that presumption. If we may go to the history of this presumption, one will be able to see that there is a good deal of experience and common sense to justify the same. Again there is the presumption which we shall draw when the child born to the lady during the subsistence of a lawful marriage is presumed to be the child of the lady's husband. This is right for more reasons than one, because such a presumption is always true and must be true. It must be held to be true in the interests of the society. There is the substantial fact, namely, the existence of a legal marriage between two individuals, and a child is born. The presumption is then good. Any student of law, will be able to see that if a presumption is to be drawn, it does not depend upon merely a fiat of the legislature. When we enact a rule of presumption what we have to see is the basis or the decisive fact upon which we can rest the presumption. That is what we ought to see. Now what is the decisive fact here? The decisive fact is that a minor contracts a child marriage; then there is the second fact that the minor is a minor in charge of a particular individual. From these facts are we to draw the presumption that the guardian or the parent, as the case may be, has negligently omitted to prevent the marriage. My submission is that in this case there is no such decisive fact which will enable us or justify us in drawing such presumption. In a case of presumption there is always a major premise; there is a certain fact. From that fact the other or inferred fact is a necessary consequence. If you look to the Criminal Law in England there also you will see Sections dealing with provisions which treat the relationship between grown up people and minors. There is a liability cast on another persons in the English Criminal Law to provide clothing and other things to children and if a person neglects to provide such necessities, then the law says the presumption may be drawn and if consequent thereof, some bodily injury is caused to the child by starvation or otherwise the law draws the presumption that the father or the parent to whom the child was entrusted was negligent to provide the child with the necessities.

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If bodily injury is caused to the child by starvation, it is presumed that the parent is responsible for that; naturally, the child cannot maintain itself, to find provision for itself, and therefore, it is presumed that if an injury is caused to the child, it is due to the neglect of the parent.

If you refer to another provision of this branch of English law, you find that, if a child under three years of age sleeps with a person above 16 years of age who is drunk, and the child dies of overlapping, the law presumes that the older person is guilty of overlapping. The reason is not far to seek. It is not only the question of age; he has to be drunk. There has to be that additional fact also.

Sir, while enacting laws of presumptions, we have to be very careful. In the present Bill, we are not legislating merely for children who are under five or six years of age; the law relates to persons who are minors according to the definition contained in the Bill. According to the Bill, a minor is a person under 13 years of age if a male. Now, if a boy of 17 contracts a marriage, it is child marriage under this Bill and the unfortunate parent, for the sin of having been responsible for the coming into existence of this minor, for the sin of having done something without anticipating a legislation like the present one, is held liable. I shall give an illustration.

Suppose a lady of twenty-five entices a boy of seventeen. Certainly, it is not an improbability, not at all, especially in these days when there is so much talk about the right for self expression. Suppose such lady of twenty five is able to persuade the youth of seventeen to marry her. The marriage is 'child marriage' under this Bill since the boy comes within the definition of 'minor' in the Bill. Now, what is the consequence? The father of the boy will be penalised unless he prepares himself with all manner of evidence, good, bad and indifferent, to show that he did not negligently fail to prevent the marriage.

Therefore, Sir, a severe duty is cast upon the parent to see that his son of seventeen years of age is not enticed away, and does not come under the influence of society women. Sir, certainly boys have to be educated. And, those days when education was confined to *gurukula*, when children were subject to influences only of the home whether of the parent or of the *guru*, sober influences, steadying influences, when children were under the absolute control of elderly persons of ripe experience who always realised that though their feet might be on *terra firma* (solid earth) their eyes were turned up towards spiritual salvation, those golden days are gone. True *Brahmacharya* was itself sufficient restraint, adequate safeguard against undesirable tendencies. But what is the situation now? The system of education is now entirely different from what it was in the past. Mass education, may I call it? Boys and girls are sent to public schools. Their mingling together freely might have its own advantages. But no one can shut

his eyes to the fact that at present the equilibrium of the younger generation is not steady or stable. Sir, temperamentally, I am always unwilling to be hard upon the younger generation; I would be rather hard upon myself and people of my age; because our hopes are centred on the youth. But, when I realise that the present day youth are sure to be attracted by all sorts of blandishments, physical, intellectual and even political, around them, I dare say, to ask the parent, the father or the guardian, or the person in charge of institution, to hold himself responsible for the sporadic activities of boys of seventeen, would be too severe and hard. Honestly, if I had known that such a law was going to be introduced in the legislature, I would have thought not once or twice, but a dozen times before I bound myself with the string of matrimony. Sir, I say this in all seriousness. Certainly, I am not afraid of the responsibilities of marital life; I have succeeded in keeping my products under control. But what I am submitting is that the problem of control of one's grown up children is every day becoming more and more difficult. I should illustrate my position.

My boy is reading in a particular College, let us take it. Naturally he is one among hundreds of students. Suppose a movement is started, and, rightly or wrongly, the majority of the students join it. No doubt, when my boy comes home, I will tell him 'you shall not take part in the movement; your father has been living a sensible, reasonable, moderate life, without taking part in such movements which are against our tradition, against our good name, and which will be against your progress.' Naturally he will ask me one question "Father, what can I do? I am one among hundreds; I will be excommunicated if I do not join the movement." Certainly, my boy will be drawn into the movement quite against his will.

Sir, I am mentioning this only as an illustration to show how it is not easy in these days to control one's children. My friend Mr. Sivathanu Pillai was saying the other day that if his son would run away from him and contract a child marriage, he would immediately get into his car and run after his son. If my boy contracts child marriage, certainly I would do all in my power to see that somehow he wriggles out of it. But certainly my friend Mr. Sivathanu Pillai would grant what amount of pressure, and influence due or undue, would be necessary to win over a grown up boy who has been entrapped by a modern woman. And, if it chooses her, the woman may demand a big amount by way of something like ransom to agree to leave the boy; in fact, this provision is sure to give room for such blackmailing also.

Sir, let me appeal to my honourable friends that, in considering this provision, they should not lose sight of the fact that it is for the acts of a human being that the penalty is sought to be imposed on his parent or guardian. It is not like the liability imposed on the owner of a wild animal or of a dangerous inanimate object. The law, which holds a person liable for the acts of the dangerous animal which he keeps, is based on the principle that such person keeps the dangerous

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animal or object for his amusement and should therefore undertake the responsibility. Now, Sir, is it going to be suggested by the legislature that it is for one's amusement that one brings forth children? I am sure no one will argue like that.

Sir, arguments may be advanced, scriptures may be quoted perhaps, for any proposition; but what we have to consider is whether we would be reasonable in coming to certain conclusions. I am now reminded of the well-known competition or contest between Uddanda Bharati and Kakasseri Nambuthiri, in Malabar. I shall briefly narrate that story. Year after year, in the literary and religious contest which used to be held at Calicut or somewhere in Malabar, a certain Uddanda Bharati used to defeat all the scholars present, and knock off the prize. Naturally, the Nambuthiris of Malabar felt wounded and prayed to God that their community might be blessed, with a prodigy who would defeat this Uddanda Bharati. And, Kakasseri Nambuthiri was born. Even as a boy he proved himself to be a remarkable scholar. In fact, he came to be known as Kakasseri Nambuthiri because he was so keen an observer of things as to be able to distinguish between one crow and another ("Kaka" means crow). Naturally, at the next annual contest with Uddanda Bharati, the Bharati was defeated through and through by the young Nambuthiri prodigy. The test was this. The Bharati would go on asserting facts one after another; and his opponent has, if he could, to deny, supported by authorities, the facts asserted by the Bharati. In this contest, Kakasseri Nambuthiri was easily able to deny and disprove every one of the assertions made by the Bharati. Nonplussed and desperate, Uddanda Bharati made the following assertion hoping that naturally the Nambuthiri would not deny it. He said "Your mother is chaste." To the great surprise of the Bharati, Kakasseri Nambuthiri said "Nahi." ("No."); and he quoted the relevant Hindu Sastra and asserted how, in a Hindu marriage which lasts for four days, on the first day the girl was married to Indra, and so on, and how only on the fourth day the husband got his rights as husband over the girl.

I refer to this story only to show how the human intellect is so deceptive; in fact, the sharper it is, the more easily are even impossibilities justified, and suggested as possible. Argument can be made available only for the purpose of *Tarka*, controversy, discussion.

We are not here dealing with theoretical law. We are not in the air as it were. When we get out of this *terra firma* and try to regulate our life in the ethereal or some other plane, there may be justification for us to deal with law in the abstract. Whether the other members agree with me in all other matters or not, I am sure that every body will agree with me in this that so far as law is concerned it has not anything to do in the abstract. It cannot operate in vacuum, it is not to be made in the laboratory. It must be applied to the actual facts of life. Therefore if a law does not square with the facts of life, if it

does not square with human intelligence and human ideas, certainly that law is not worth anything. If by analogy you say that nobody compels you to marry, it is a voluntary act on your part, you are marrying for the purpose of amusement and for your pleasure and, if as a result of your actions, half a dozen children come into existence, according to us legislators child marriage as dangerous a thing as the tearing away of human beings by a tiger or a bear, well, Sir, I am not agreeable to that view. Whatever be the analogy, it is far fetched. My submission is that even if there is any necessity for the substantive part of section 6, I would say that the proviso is wholly unnecessary. It is against all canons of accepted criminal jurisprudence. It will never square with what is actually taking place.

MR. N. RAMAKRISHNA PILLAI (*Vaikom cum Kottayam*): May I know from the honourable member whether a tutor or a nurse in temporary charge of a minor will come under the Section if he or she fails to prevent the solemnisation of the marriage of the minor?

MR. E. SUBRAMONIA AIYAR: Sir, when I began my speech, I referred to Section 6 and stated that the net is spread wide. A tutor or a nurse or even a care-taker will be liable under the Section. For illustration, suppose I leave my boy in Trivandrum and I go with my family for a pilgrimage to Benares and my friend Mr. Ramakrishna Pillai is the care-taker here. Suppose the boy escapes and contracts a child marriage. My friend Mr. Ramakrishna Pillai will be liable. Therefore it is for the court to say whether a person can be brought under the section. I cautiously said that the interpretation of all these things will depend to a considerable extent upon the ideology which operates upon the mind of the judge. No doubt, the judge will administer the law only as it is. He will never make the law but will only administer it as he finds it. But every person, be he a judge or a lawyer or a person acquainted with the courts, will certainly subscribe to this statement of mine, that judges and lawyers and others, particularly judges, often make the law rather than administer it, because the effect of the environments, the traditions of the judge, the ideas current at the time, the intentions of the legislature as thought out by the judge and the mental bent or bias and various other judicial currents are better imagined than described. My admiration has always been that in spite of the weaknesses of human nature our judges are able to show such good and honourable work in spite of, as I said, the modern trend of thought often around us. So, to remove all apprehensions from the mind of my friend, Mr. Ramakrishna Pillai and persons of his way of thinking, the proviso should be deleted. So far as Section 6 is concerned, it can take in every one of us even if we are in temporary or casual custody of a minor for say three hours. Of course in the administration of the law it may be said that care will be taken to see that such things do not take place. But it is just like giving a loaded gun in the hands of a child and seeing that no mischief is committed. Why should you give the loaded gun and then take care to see that the

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mischievous is not committed? Why not omit the portion "negligently fails to prevent it from being solemnised"? Promoting the marriage is one thing, but preventing is quite different. What is the exact nature of the prevention? What are the things that a person should do to prevent the solemnisation of the marriage? In fact, if there is any branch of law which does not lead to clarity it is the branch of law which deals with the duty or standard of care which the State expects. What is that standard of care? It is the care that a reasonable man takes and not a reasonable woman. That is because we have no such thing as the average reasonable women in law. With all respect to my friends, the law does not take them to be reasonable. The standard of care is the care of the average reasonable men. Where is the standard for the average reasonable man? Any person who is watching the progress of the law of torts and is aware of the recent decisions will be able to say that there is no certainty in these matters.

MR. JOSEPH VITHAYATHIL: May I know from the honourable member whether the failure on the part of the person in charge of the minor to have the minor under lock and key will not be negligence?

MR. E. SUBRAMONIA AIYAR: Sir, when I moved the amendment I referred to this matter and therefore I do not want to repeat it. If I put my boy in a room and have him under lock and key—I grant that if he is let at large, he will be married by somebody else—I do not know whether an application to the honourable the High Court under the so-called section of *habeas corpus* will not lie against me for wrongful confinement by some interested person, by that lady herself who wants to marry my boy. It is wrongful confinement to have a human being under lock and key. Under the criminal law, even under the Penal Code, 12 is the age of consent and 7 is the age under which a person will not commit an offence and I do not think any person has got the right to put a boy under lock and key without being liable for an action for wrongful confinement. My submission therefore is that this amendment is wholly unnecessary.

MR. P. S. NILAKANTA AIYAR (*Nominated*): May I know from the honourable member whether the wording of the Section "any person having charge of the minor" will include more persons than one at the same time, such as the father, the mother and for instance the steward of a hostel where the boy may be lodging?

MR. E. SUBRAMONIA AIYAR: That is matter of construction again. Whether Section 34 of the Indian Penal Code or the corresponding section, Section 23 of the Travancore Penal Code can be invoked under Section 6, whether two or more persons can have simultaneous charge and if so whether the negligence of the one will be the negligence of the other or whether they have got a common intention or common duty, certainly the honourable member will not expect me to dilate

upon here. Anyhow, I am thankful to the honourable member for pointing out that aspect of the matter.

MR. S. KRISHNA AIYAR : Referring to his illustration of a lady of 25 enticing away a lad of 17 and then marrying him, may I know whether such connubial union will be regarded by any system of law as a legal marriage and if so, which?

MR. E. SUBRAMONIA AIYAR : Sir, certainly a question proceeding from my honourable friend does not admit of a disputation. But the query is whether any system of law will consider the marriage of a boy of 17 with a woman of 25 as valid. I am not aware of any system of law which does not consider it as valid. Even coming to Travancore, there is nothing to declare such a marriage invalid. According to the Bill, so far as a male is concerned a person under 18 is a child and hence I said in my illustration a boy of 17 and a lady of 25. Certainly it cannot be said that any system of law says that the marriage of a boy of 17 with a woman of 25 is not valid unless in a particular country there is a statute which says that marriage can be brought about only by persons who have reached a particular age. In England the age was 14 and 12 for boys and girls respectively. Later on, this was raised. No doubt, in different countries different age-limits have been prescribed.

MR. K. R. RAMASUBBA SASTRI (Nominated) : May honourable friend was saying about the marriage of a boy of 17 with a woman of 25. My question is whether it is not within the memory of the honourable member that Shakespeare was only 18 at the time of his marriage when the girl he married was about 8 or 10 years his senior.

MR. E. SUBRAMONIA AIYAR : Sir, I take it that my honourable friend, Mr. Krishna Aiyar, was emphasising the disparity of age between the boy and the woman. Perhaps he seems to be of the view that a marriage between a boy of 17 and a lady of 25 or 23 or 21 is not valid. In fact, all that I have got to say in that connection is that, so far as I know, I am not aware of any law which says that a marriage contracted by a boy of 17 with a lady of 25 is *per se* invalid. At any rate, even this Bill does not make such a marriage invalid. Therefore it was that I referred to the incongruity here by emphasising the distinction between a child and a minor. Minor is a person under 18 so far as a male is concerned and a child also is under 18. But so far as the female is concerned, a child is a person under 14 but a person under 18 is a minor. Therefore it was I never wanted to make the female a child and hence I said a lady of 25 because the age of the female is above 14. If the lady is 20 she is not a child and she is not a minor. But the boy is 17. He is a child and he is also a minor. Such a marriage will be a lady contracting a child marriage. The lady may be punished under section 3 but the boy cannot be punished under the section at all. But the boy's father will be punished unless he is able to show to the satisfaction of the presiding officer that he had taken all possible care to see that the boy did not come within the sphere of influence of the lady. Certainly not a very desirable thing

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if the influence of ladies are considered by societies to be so bad. I am not of that view at all. They are a very steady influence upon us and certainly without them there is no life at all. Therefore I shall be the last person to say that the influence of ladies upon a child or a boy will be of a pernicious character. But even in the case of roses we know there are thorns in them. But in the same way, ladies are angels, they are persons who practically maintain this universe, without them we shall be nowhere, but in spite of all their goodness, in spite of all their utility, there is a certain weakness common to them and us, but stronger in them than in us. Therefore it is I said that when we legislate we must for the time being take away the proviso and then see how many cases of negligent failures happen. Let us see the operation of the law. There is no hurry about it. In fact the evil is not so pernicious here as it is elsewhere. To day I had the curiosity to look into the Select Committee's report on the Sarda Act. They said that according to the census of 1931 there are about 300 or 400 widows one year old. No such evil exists in our State. Certainly none of us will be prepared to say that there are child widows one year old, two years old, three years old, four years old or five years old. If a parent disposes of his child before it is one year old as a chattel to somebody else, certainly he must be segregated and isolated or we may even adopt the policy that is adopted by certain ideologists on the continent that such people are not for the good of the world and that measures should be taken to stop their breeding if not to exterminate them. Such a policy may be welcomed by any reformer. Because a particular state of things existed elsewhere among other people, it is no reason why we in Travancore should think of placing these fetters upon normal, quiet, sane people like ourselves.

If this particular state of things existed among the Brahmins or some people elsewhere, that is no reason for placing these fetters upon the normal, quiet, resigned people like us in Travancore. A question may be pertinently put, "why do you fight so much over all these matters? You are not going to be hauled up before a criminal court. For you are not going to act against the law and therefore let it be in the Statute Book. If the necessity arises, we shall use it." That sort of argument is not proper. The environments not acceptable must be conducive to peaceful existence. One should not be always in dread of something which might happen; one should not be allowed to think that he should live in terror always. If this proviso remains in the Statute Book and if I have a boy for instance, I shall always be reminded of some terror attending on me. If I do not see my boy by 6 o'clock in the night, (it might be he might have gone for tennis) I have to remain anxious till he returns. If he delays for a long time, there is the terror that he might have been carried away by some lady. The existence of sections like these have a psychological effect. It is not really the actual restraint that causes the trouble. The fear of restraint is more devastating. It narrows the man's vision. It dwarfs

him. I am aware that living in society, necessitates a certain amount of restraint upon the freedom of self-assertion. Nevertheless it seems to me that one should have as much freedom as possible to develop oneself freely in the way he likes. If you turn one side, there is the municipal law staring at you; if you turn another side, there is the sanitary law; if you turn to the right there is the police law; if you be a little indifferent or be in a moment of depression, and it is our every-day experience that a person is not always happy and is often subject to moods of depression the law of negligence stares at you. When a man is put to the necessity of thinking about something always which might happen to him seriously, how is he to adjust himself in the world; how to shape his progress in the future? If he is to feel nervous always, how is he to lead his daily life? Is he to spend his days in fear? It is not that the laws made by man have no effect upon his mind; they have a psychological effect. Whenever you legislate, see that the activities of the individual are not crippled. See whether it will make or mar his evolution. This constant dread of something which might happen quite unexpectedly is not conducive to the happiness of an individual. Such a phenomenon will dwarf him. So, I appeal to the House to accept my amendment.

MR. S. KRISHNA AIYAR: I am glad to express my very great appreciation to the learned exposition of the difficulties of sub-clause (ii) to Section 6 at the hands of Mr. Subramonia Aiyar. But I find that there is some legal defect in accepting it.

MR. K. R. RAMASUBBA SASTRI: Is the member in order in making a speech after the reply is over?

PRESIDENT: He is raising only a technical point.

MR. S. KRISHNA AIYAR: I merely confine myself to the question of law arising in this sub-section. Under Standing Orders No. 24 (2), we find as follows —

“An amendment cannot be moved which can have the moral effect of a negative vote.”

This very point was ruled once. In one of the Rulings of the Chair reported at page 62 from the Select Rulings, the substance is as follows:

“When Mr. G. Raman Menon moved for the deletion of clauses 3 to 5 in the Mines and Minerals Bill, the Law Member raised a point of order whether by accepting the amendment the House would not be going back on the principle that had already been accepted by it.

Mr. V. Subba Aiyar also raised the following objection; ‘I would also submit that the amendment is not in order, but not on the ground urged by my friend Mr. Parameswaran Pillai. The amendment proposes to delete certain clauses in the Bill. That is against Standing Order No. 24 (2) which runs as follows:—

‘An amendment may not be moved which has merely the effect of a negative vote.’”

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The President ruled: "Mr. Raman Menon, I find it necessary to rule both on the technical ground stated by Mr. Subba Aiyar and on the ground of substance stated by the Law Member, that your amendment is out of order."

That is the position. Under these circumstances, I doubt whether Mr. Subramonia Aiyar's amendment is in order.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Legal Remembrancer to Government*): I may be permitted to say that during the Budget Debate in 1113, the Chair ruled on an identical question that a motion for the deletion of a whole clause would not be in order. If an amendment deals with the deletion of a sub-clause, the Chair held that that was in order. In the present case, the amendment seeks to delete only the sub-clause. It was also pointed out in the Ruling that even if the amendment related to the removal of a word, it was held in order. The same thing was upheld in the House of Commons.

MR. E SUBRAMONIA AIYAR: I have little to add to what the Legal Remembrancer had said. I may say that an amendment which has the effect of negating a proposition agreed upon should not be accepted. We are now dealing with only sub-clause (ii) of Section 6. The substantive section is Section 6 and that is the controlling section and nothing is made to go back on the principle accepted in that section by the House.

PRESIDENT: The point for consideration is whether the substantive provision namely Section 6 is affected. The substantive clause makes certain acts to come within the ambit of the arrangements provided for by law. The proviso comes in there as a means of interpretation of the expression "..... negligently fails to prevent.....". Now, what is sought to be done is to delete that provision by way of interpretation clause, leaving the substantive provision of the section to stand. That is, the penalty clause stands while the interpretation clause is sought to be deleted. That I hold is in order.

The motion before the House is, amendment No. 6 namely,

"In clause 6, delete sub-clause (ii)."

The amendment was put to vote and carried.

SRIMATI T. NARAYANI AMMA: Sir, I demand a poll.

A poll was taken with the following result.

AYES—15.

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|-------------------------------|------------------------------|
| 1. Mr. Kottalil P. Abraham | 8. Mr. J. E. A. Pereira |
| 2. " S. Chattanatha Karayalar | 9. " N. Ramakrishna Pillai |
| 3. " Joseph Vithayathil | 10. " M. Ramiah Pillai |
| 4. " K. C. Karunakaran | 11. " E. Subramonia Aiyar |
| 5. " T. C. Kesava Pillai | 12. " N. Velu Achary |
| 6. " P. V. Mathai Chem. | 13. " P. Vivekanandam |
| 7. " R. Narayanan Namboori | 14. " P. S. Nilacanta Aiyar |
| | 15. " K. R. Ramasubba Sastri |

NOES—17.

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|-----------------------------------|--|
| 1. Mr. P. C. Adichan | 10. Sahib Bahadur M. K. Mackar Pillai |
| 2. Sahib Bahadur V. Chendamiab | |
| 3. Srimati K. Devaki Anthar-janam | 11. Mr. S. Narayana Pillai |
| 4. Mr. E. E. Pandarathil | 12. „ K. R. Narayanan |
| 5. „ D. Francis | 13. Srimati T. Narayani Amma |
| 6. „ M. L. Janardana Pillai | 14. Mr. Kainikara M. Padmanabha Pillai |
| 7. „ N. John Joseph | 15. „ Codiveetil C. Ramankunju |
| 8. „ T. T. Kesavan Sastri | 16. „ P. Sivarama Pillai |
| 9. „ S. Krishna Aiyar | 17. „ P. Narayana Pillai |

NEUTRALS—14.

- | | |
|-------------------------------|-------------------------------------|
| 1. Mr. M. L. D'Cruz | 8. Mr. Puthupalli S. Krishna Pillai |
| 2. „ C. Jebamony Nadar | |
| 3. „ K. P. Kcchukora Tharakan | 9. „ G. B. E. Truscott |
| 4. „ J. R. Harler | 10. „ M. Ramachandra Rao |
| 5. „ M. K. Nilacanta Aiyar | 11. „ A. Gopala Menon |
| 6. „ M. Govinda Pillai | 12. „ M. P. Joseph |
| 7. Dr. G. D. Nokes | 13. „ M. K. Gopala Pillai |
| | 14. „ G. S. Abdul Karim |

The amendment was declared lost, 15 for 17 against and 14 neutrals.

The motion that clause 6 stands part of the Bill was then put and carried.

MR. K. R. RAMASUBBA SASTRI: Sir, I move the following:

“In clause 6, add the following as sub-clause (iii).

The Government reserve to themselves the power to exclude or exempt from the operation of this Bill special communities and persons and the fact of such exemption will be published in the Government Gazette.”

PRESIDENT: The amendment as drafted is defective. Before the amendments are tabled it would be useful that formal changes are made in consultation with the member in charge of the Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI: The amendment as it stands cannot be accepted.

PRESIDENT: The amendment may be modified and then moved after lunch.

The House adjourned for lunch at 12.57 p. m. and met again at 2 p. m. with the President in the Chair.

MR. PUTHUPALLI S. KRISHNA PILLAI: I had a discussion with Mr. Ramasubba Sastri about the amendment he suggested to clause 6 and he has agreed that he would support Mr. E. Subramonia Aiyar's amendment in respect of clause 11 both being the same.

SRIMATI T. NARAYANI AMMA: In view of the volume of non-official business that has to be disposed of, Sir, I have the honour to request you to allot one more non-official day for the consideration of the Bill.

SRIMATI K. DEVAKI ANTHARJANAM (*Nominated*): I second it.

PRESIDENT: The honourable member wants one more non-official day. In coming to a decision I shall be largely guided by the sense of the House. What is the general idea?

MR. K. NARAYANAPERUMAL NADAR: Before putting the motion to the vote I wish to bring to the notice of the House that during the last session and this session also no day was allowed for resolutions.

PRESIDENT: There is not such a day as a day for resolutions. There is a non-official day. There is no separate day for non-official resolutions in any legislature.

The motion for allotting one day more for the consideration of the Bill was put and carried.

Clause 7.

SRIMATI T. NARAYANI AMMA: I move that in clause 7, substitute the words "Magistrate of the First Class" for the words "District Magistrate." According to the Bill, as revised by the Select Committee, the District Magistrate can take cognisance of offences under this Bill only upon a complaint made to it. The District Magistrate is a touring officer and when he is out of the station offences under this Act cannot be taken cognisance of and tried. It is to obviate this difficulty that I am proposing this amendment. For purposes mentioned in the subsequent clauses also it is necessary that the Court concerned should be that of the First Class Magistrate. So I move this amendment.

MR. S. KRISHNA AIYAR: I second the motion.

[At this stage, the President left the Hall and the Deputy President took the Chair.]

MR. K. R. RAMASUBBA SASTRI: I oppose the amendment. I would like to know whether my amendment to clause 6 in the list will be proceeded with after this is over. I now find that no mention at all of that amendment is made and we are proceeding to clause 7. I want to know what has become of that, whether it is suspended for the present or whether we will be discussing it later on. I would like to know how the business is to be arranged.

MR. PUTHUPALLI S. KRISHNA PILLAI: I suggested that the member's amendment to clause 6 is the same as Mr. E. Subramonia Aiyar's amendment to clause 11 and the honourable member has agreed that he may say what he has to say when that amendment is taken up. The amendment itself is not in order. If he were to move that amendment I would have to oppose it. That was what was agreed to.

MR. K. R. RAMASUBBA SASTRI: I was not aware of that. If that is so I may take it that I may be allowed to speak on my amendment, when the amendment suggested by Mr. E. Subramonia Aiyar to clause 11 is taken up, and all these may be considered together.

MR. S. KRISHNA AIYAR: Sir, I rise to a point of order. There is already a motion which has been seconded.

MR. T. C. KESAVA PILLAI: I rise to a point of order. The honourable member Mr. M. Sivathanu Pillai is not in his place. He is present in the Hall and is in another place.

DEPUTY PRESIDENT : Where is that member ?

MR. T. C. KESAVA PILLAI : He is sitting in another seat in the Hall.

DEPUTY PRESIDENT : His presence elsewhere is not to be recognised. That is not a point of order.

Do you think, Mr. Sastri, that if this clause is considered your motion will be out of order ? Is that your point ?

MR. K. R. RAMASUBBA SASTRI : I want only to know whether my amendment will be allowed to be discussed after the consideration of this amendment.

DEPUTY PRESIDENT : That amendment will be allowed to be moved in the proper time. Now the other amendment is before the House.

MR. K. R. RAMASUBBA SASTRI : I oppose the amendment that the trial should be not by the District Magistrate but by the First Class Magistrate. The reason given for that substitution is that as the District Magistrate may go out on circuit, the trial of the cases coming under the cognisance of this Bill may be very much delayed and therefore in the interest of the speedy trial of cases it is necessary that the power should be entrusted to the First Class Magistrate. It is a very unhappy feature of this Bill that all natural presumptions of law and all principles of natural equity and justice are sought to be violated by introducing new and novel principles in favour of the speedy passing of the Bill. Just now we have listened to the argument that the presumption of law which is that the man or woman should be presumed to be innocent until they are proved to be guilty is to be reversed for purposes of offences under this Bill. It is one of the fundamental principles of jurisprudence. It is not right that a person should be punished for the so called wilful neglect in not preventing the marriage of his children. All the members have pointed out the various difficulties that stand in the way of a parent. That, I believe, is the case in most of the Brahmin families. In such cases we have to see whether a Brahmin parent is to be running after every child whom he has sent for the purpose of education to see that the boy does not go out of his head by circumstances beyond the control of the boy himself and his father. And we are all in one sense creatures of environments. A boy, when he goes to school finds a new impulse of sex and creed. It is not a new principle that every body must subordinate his interests to that of the mass dictates, but he must also have a will to act according to his religious and healthy environments and the duty that he owes to his parents.

MR. M. SIVATHANU PILLAI : (*Tovala cum Agastisvaram*) : I rise to a point of order. I find official benches disposing of files. I would like to know whether it is permissible.

DEPUTY PRESIDENT : Honourable members are not expected to go through files in the Houses.

MR. K. R. RAMASUBBA SASTRI : What I want to emphasise in this connection is that if possible the tribunal that functions under this Bill ought to be of the highest possible quality and quantity because we find that under this Bill new provisions are being put in and heavy penalties up to 10 years' imprisonment are given. Then all the serious objections that a man will bring to prove his innocence will be denied.

MR. C. JEBAMONY NADAR: Clause 7 if amended would read that "notwithstanding anything contained in Section 170 of the Code of Criminal Procedure, no Court other than that of a Magistrate of the First Class shall take cognizance of, or try, any offence under this Regulation". That means the District Magistrate will have no power to try the case and this goes against the provisions of the Criminal Procedure Code. How can we reconcile that fact?

MR. K. R. RAMASUBBA SASTRI I think the point raised by the learned member also deserves serious consideration at the hands of this House. The legislation that we enact now must not go against the provisions of the Criminal Procedure Code.

MR. C. JEBAMONY NADAR: I also suggest that the substitution of the words "of a Magistrate" in the place of the present amendment.

MR. K. R. RAMASUBBA SASTRI: These District Magistrate and the Magistrates of the First Class have, I believe, in the Criminal Procedure Code the same powers, only the District Magistrate is generally a more experienced person, being one who comes into possession of power after a good deal of experience in life. As such, he is expected to view these matters with a broader outlook than a mere first class Magistrate. Not only that, under the Criminal Procedure Code, we must remember that even Second Class Magistrates are invested with powers of First Class Magistrates at times. It will then be simply easy to put any man in charge of these powers, and being such a revolutionary provision of law, affecting the rights of the community like the Brahmins, I would bring to the notice of this House that this amendment that the First Class Magistrate could try the case instead of the District Magistrate, should not be allowed. Only the District Magistrate should try the case. It is unnecessary that these cases should be tried at all, that is our view, because, after all, these are social offences not bringing into opprobrium any point on which the community or the morale of any community can be said to be affected. A man, who, in order to secure a husband for his girl proposes to sanction an engagement, and that is all according to our view what the Brahmins sacramental marriage mean, need not be penalised by law. In this respect, I would like to point out that so long as certain principles are not accepted by all communities, we might try to walk in the old groove instead of attempting to jump into new grooves simply because there is an anxiety to reform or enter into social and political life. The point I am at is that we should provide for the spiritual welfare of our children, I mean the members of the Brahmin community which alone I specially bring to the sympathetic consideration of this House, by leading the boys and girls to a religious school and ceremony called *Upanayana* and the same *samskara* being performed for the girls at about the same age. The *upanayana* of a boy and the marriage of a girl are in Hindu religion, the same *samskara*. I really do not see how it is said that boys and girls should be differentiated so far as this particular *samskara* is concerned. I am now dealing with the religious aspect of this question, because it materially affects us.

MR. PUTHUPALLY S. KRISHNA PILLAI: Is there any religious principle involved in the question whether it ought to be the District or the First Class Magistrate who ought to try the case.

MR. K. R. RAMASUBBA SASTRI: I believe so, because, if it is a new officer who comes to try the case, he will brush away all religious considerations. If on the other hand, the officer who tries the case is a family man, who might have children of his own, and who might have experience of the difficulty of getting brides and bridegrooms for his children, and if such a man is empowered with the trial of the case we will have more sympathetic consideration. If I am wrong in the view I have taken, I stand subject to correction. The main point is whether a man, simply because he believes in his religion, should be penalised. Because somebody thought that this sacramental marriage of the Brahmin involves immediate possession and immediate violence it is not right to penalise them. I say all these ideas have to vanish. We have therefore, to consider the point whether after all, it is a religious subject or not. If I am following the dictates of my conscience in saying that my girl should be provided with a husband, I simply follow the religion. I do not want to disobey the law. My child shall be at the disposal of the State. I shall see that violence of person is not committed or perpetrated before the girl attains the age of fourteen. If I appeal to the older officer in this way, I think, he will respond sympathetically. He will say "My dear Sir, you are right". This is only registry of the marriage and I ask why should the registry be disallowed.

MR. M. P. JOSEPH: Is there any distinction in the interpretation of the section between a senior officer and a junior one?

MR. K. R. RAMASUBBA SASTRI: That is just the distinction that I am always making. I think I am appealing to the sympathy of the elder member. But the junior man, like the scorpion is only anxious, to strike the first person who comes before him. On the other hand, I can appeal to the sympathy of the old man, who knows the difficulties of family life, who is not perhaps a bachelor or an ascetic or anything of the kind.

DEPUTY PRESIDENT: Suppose the District Magistrate is an young officer.

MR. K. R. RAMASUBBA SASTRI: Generally young officers are not given such powers. Generally a person becomes a District Magistrate only after he passes his fiftieth year or just one or two years before retirement. They are then chucked out.

MR. C. JEBAMONY NADAR: Does the duty depend upon the age of the officer?

MR. K. R. RAMASUBBA SASTRI: Yes to a very great extent it depends upon the experience, the practical wisdom and the family life of the officer. I shall take the case of an examiner who has a large number of children who appear in various classes in schools from E. S. L. C. up to the B. A. I think he will be more sympathetic than a mere bachelor

[Mr. K. R. Ramasubba Sastri]

who has an M. A. Degree. With such a man even a Ramachandra Rao might fail. As a matter of fact, it happened once that we were coming back from Madras after writing the B. A. Degree examination. Mr. Hanumantha Rao, a very great mathematician with unfortunately no children was also travelling along with us. We have known him as one of the Board of Examiners, but none of us could identify him. So even while we spoke about him no one knew that he was overhearing us. And we spoke such horrible things about him; that he did not want to test the students but wanted to display his supreme intelligence, that he simply wanted to show that he was a great man and that if he had a son he would pluck in every class a number of years. His face grew smaller and when we said that he would not live long he actually burst fourth in fury thus disclosing his identity to our great dismay. I am simply giving this anecdote as a practical illustration that a new magistrate who simply gets the First Class Magistrate's powers is not likely to recognise the various difficulties which ought to be considered in a trial of this kind. I have pointed just now that the prior amendment about presumption was an innocuous amendment. It did not do anybody any harm. Yet by 17 votes to 15, we have lost and now, where is the guarantee that we will be sympathetically dealt with by the first class magistrate or with the second class magistrate invested with the first class powers. He will not take into consideration anything and the maximum punishment will be given. There are two points; the conviction and the sentence. At least conviction may be for a technical offence and the sentence must be very light. In all these points, the District Magistrate with his experience will be more lenient and sympathetic than the first class magistrate. Again, I would say "why not leave this as it is, instead of pressing it so hard against persons who are simply guilty of a technical offence." This is after all a technical offence in persons who want to give their children in marriage. It is so, because he is obliged to do so by a paramount religious duty.

When I say that I am performing a religious duty I expect that it will be exempted from the penalty of the law. In this connection I would like to bring to the notice of the House that there are some matters in which all Political and Social bodies can act according to the law like the Law of Property and Person and though with reference to social matters also the House of Legislature has ample jurisdiction yet on questions of religious matters we are really the slaves of not only the priests but also of the equally authoritative pronouncements of the scriptures, *Vedas* and *Smritis* both of which we are bound to obey.

DEPUTY PRESIDENT: The honourable member's observation should be strictly relevant to the amendment.

MR. K. R. RAMASUBBA SASTRI: Sir, I am within the scope of the amendment.

DEPUTY PRESIDENT: The point to be considered here is whether the District Magistrate or a First Class Magistrate is to be invested with the jurisdiction.

MR. K. R. RAMASUBBA SASTRI: Sir, I bow to the ruling of the Chair. But I was telling the House whether it is not a fact, a fact which must be taken into consideration, that the offence is related to a sacrament and as such it ought to be tried by a superior and experienced officer like a District Magistrate. I was also saying in developing that argument that the sacrament is a religious duty. Nothing more. After all Sir, this is a private bill in which our cherished traditional and theological views are all being brushed aside. At least we must be heard before we are punished. That is all I have to submit Sir. So I would like to point out that however our cherished feelings and emotions are being slurred we would protest that every portion of this measure is capable of affecting our theological and religious feelings.

DEPUTY PRESIDENT: This is not an appropriate occasion for the honourable member to engage himself in theological airings.

MR. K. R. RAMASUBBA SASTRI: Even if I am irrelevant to that extent I crave the indulgence of the chair. Sir the very fact that I have acted according to the precepts of my religion is punishable under this Act. On that point I submit that I am entitled to a hearing.

DEPUTY PRESIDENT: This is absolutely irrelevant to the question at issue.

MR. K. R. RAMASUBBA SASTRI: If you Sir, rule it out as irrelevant I have got nothing more to say on this. Sir, what I am submitting is that a man is not bound to obey the law of the land if it contravenes the precepts of his religion. In this connection I may refer to a famous dictum of Abraham Lincoln.

DEPUTY PRESIDENT: The dictum of Abraham Lincoln is not relevant here.

MR. K. R. RAMASUBBA SASTRI: Sir, if it is irrelevant I will simply sit down.

DEPUTY PRESIDENT: All right go on.

MR. K. R. RAMASUBBA SASTRI: Sir, I will only just read a few sentences from a famous pronouncement by Abraham Lincoln, *i. e.*,

"I am not bound to win but I am bound to be true—I am not bound to succeed but I am bound to live up to what life I have—I must stand with anybody who stands right, stand with him while he is right and part with him when he goes wrong."

Therefore Sir, all Hindus especially the Brahmins who are the priests of the community have got strong feelings in this matter. I will deal at length with the provisions of this Bill later on.

MR. E. SUBRAMONIA AIYAR: Sir, I fail to see why there should be this amendment in this Section of the Bill. Apart from the question that the District Magistrate is a more competent man or a woman—because hereafter we are sure that we will have women District Magistrates—than a Magistrate of the first class, what is the substantial reason for introducing this amendment unless it be that you find it in the British Indian Act? Are we to be led by what is found elsewhere? The Select Committee did not think the amendment necessary.

[Mr. E. Subramonia Aiyar]

It appears to me that we are being misled by the term 'offence' and 'Criminal Law'. Offences of a grave nature under the Penal Code are triable by First Class Magistrates. But the act restrained by this Bill is certainly not one wishing moral turpitude. The only aspect of the matter is that if this Legislation has any shred of reason it can be supported only in the view that it is a desirable and necessary piece of social reform to the effect that certain practices prevalent in a community must be restrained so that the society may develop on proper lines. And so Sir, it is not a piece of Penal Legislation. It is a legislation for reforming a community. It is upon that basis it proceeds.

Looking at the offences, Section 3 says that the offence is punishable with a fine which may extend to Rs. 1000. Section 4 says that the offence is punishable with one month's imprisonment or with a fine of Rs. 1000. Section 5 says that the offence is punishable by one month's imprisonment or with a fine of Rs. 1000 or more. As a matter of fact, if we consider it as an ordinary criminal offence, it comes under the Penal Code, and then why not the Second Class Magistrate try the cases? So it is not upon that basis that provisions are made in this Bill. In fact the idea of the Legislature and the Select Committee which sat over the Bill seems to have been that a special tribunal must be created for taking cognisance of this special class of cases of offences. This idea is based not on the ground of ethical and religious sentiments but on grounds of a social policy. Therefore it was decided, and rightly so, to let the matter go before a person, a presiding officer of superior status. Certainly at this time of the day whatever theoretical arguments are advanced nobody is going to contend that there are no gradations of status among officers if not among men. A District Magistrate is superior to a Magistrate of the first class and we take it therefore that persons occupying the positions of District Magistrates are persons of superior ability fit to try such cases. I am not going to concede that age and seniority are not factors which will have their value in the capacity of a person who is called upon by statute to try and punish people for offences. Age means experience, experience means wisdom, and wisdom means discrimination. So if you look to the principle of the Act the idea seems to be that as these matters are matters affecting and touching the vital points and customs relating to a particular community they may come up for consideration before a superior tribunal and not to be treated as ordinary class of offences. Let there be a more dignified method adopted in this matter so that offenders in this case may not be placed on the dock with persons who are accused of theft, murder or forgery. Though the presiding officer is called a Magistrate and though the court is called a criminal court the idea seems to be to have as little of the criminal atmosphere about it. I would very much like to see that offences in this case are tried by a Civil Tribunal treating the offence as Penal. Now there is another aspect of the matter.

The trend of modern opinion in the case of Criminal law is that people have begun to dispute the utility of punishments, even of criminals for their crimes. Imprisonment and all the rest of it, criminologists now say, are not the proper remedy for crimes which are a social evil. Modern criminal jurisprudence—my friend the Police Commissioner may not agree with me—tends towards the view that criminals are unfortunate people, defectives, insane people, who have to be cured of their mental defects.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB : On a point of order, Sir, Mr. Sivathanu Pillai is carrying on conversation with some one else when one honorable member is addressing the House.

MR. E. SUBRAMONIA AIYAR : These are days, Sir, when criminologists of experience are questioning the utility of punishments in the matter of prevention of crimes. The trend of modern opinion is towards psychotherapeutics.

MR. M. P. JOSEPH : Is the honorable member speaking on the amendment, Sir ?

MR. E. SUBRAMONIA AIYAR : I am ; it is a matter for regret that such a question should have come from my learned friend Mr. M. P. Joseph. I am sure, if he had been carefully listening to my address, he would not have put this question.

I am pointing out that this, enactment should not be treated as a purely criminal measure. If the offence of child marriage had been one of a purely criminal nature, like theft for instance certainly, I would have argued that Magistrates of the second and third class could try it. I am attempting to show how child marriage is not a criminal offence, and how therefore persons charged with having been parties to a child marriage should be tried by Magistrates of a superior status. I was submitting how, even in regard to purely criminal offences, the trend of modern jurisprudence is to treat the offenders as imbeciles or defectives, not to punish them but to try and cure them of their mental derangement.

Therefore, Sir, what I want the House to consider is that, in the case of child marriage which is not after all a criminal offence, the offenders deserve to be tried by a special tribunal of superior status so that even respectable persons may be tried. Certainly persons who seem to differ from the supporters of this Bill deserve to be treated well by the Magistrates who are to try these cases. I may just inform the House of a recent case which happened in Rajamundry. There, an old gentleman married his daughter's daughter to his adopted son ; it was a child marriage under the British Indian Child Marriage Restraint act. The old man was about to croak, and he thought that in the interests of his family the marriage must be performed in his life time even at the risk of a deviation from law. The old man, his son-in-law and others were prosecuted for the offence of child marriage.

[Mr. E. Subramonia Aiyer]

The old man said openly in Court "I am very old and about to die; the punishment you may award is therefore of little consequence to me, because, in a few days, I shall be in a place where all your punishments would be absolutely ineffective. So long as I happen to be in this world, I am not able to forget my attachment to the various members of my family; and at this stage of my life, if I do not unite these two youngsters together in happy wedlock, I do not know what will happen to them after I die. That is my motive in bringing about this alliance." The Magistrate, who was a man of judicial experience, took into consideration all these facts and awarded very light punishment. Such cases may arise every where.

MR. K. R. RAMASUBBA SASTRI : I beg to bring to the notice of the honourable member that even in our High Court.. ..

DEPUTY PRESIDENT : You cannot make a statement now.

MR. E. SUBRAMONIA AIYAR Apart from all these considerations, Sir, a reading of this Bill will convince everybody that the idea of the measure is to treat child marriage on a footing entirely different from offences forbidden by the Penal Code. It is therefore only just and fair that these offenders are tried by superior Magistrates like District Magistrates.

It has been argued, Sir, that District Magistrates would have to be touring the districts and would not therefore have the time to try these cases. How many complaints, I ask, are there going to be under this Bill. These are days of statistics some how people imagine that numbers ought to lead to certain definite conclusions; on another occasion, if necessity arises, I shall say more about the utility of statistics. Any how, Sir, let us look into figures in this matter. How many are there in Travancore who believe in child marriage? How many child marriages are there in Travancore? And, after this Bill becomes law, how many prosecutions are there going to be in a year? The reason why we have this Bill here is quite clear. Because there is a similar legislation in British India, we are attempting to have one here also. If British Indians are black, we should also be black; if they are brown, we shall also be brown. So far as my knowledge goes, the cases of child marriage in Travancore are very few; and cases which are likely to go to courts will be very very few indeed. Therefore, it cannot be argued that the District Magistrates would not find time to deal with these cases. And, if later on it is found that they are not able to handle these cases also, there is nothing to prevent this provision being suitably amended.

Sir, if it is the idea of my friends that the conduct of these cases before the District Magistrates would be more difficult than before the lower Magistrates, then that is the very reason why I want these cases to be tried by District Magistrates alone. After all, the idea is to prevent child marriages; it is more or less a kind of educative measure and not a penal one. I do not think anybody is going to walk from door to door, from house to house, find out cases of child marriages and launch

prosecutions. Sir, we have to bear in mind the cases of poor people in the mofussil parts. This measure is sure to give a handle to mischievous people to harass and to threaten innocent people in country parts with prosecutions under this measure. Therefore, Sir, even if there are going to be loop holes in this Bill, which is after all only an experimental measure, nothing would be lost; all defects can be rectified later. That is the aspect which I would like to emphasise. Nothing is going to be lost by the prosecution being made some what difficult, or rather less easy; on the other hand, there is much to be gained by that, since even respectable people are sometimes likely to be brought before the Magistrates, under this Bill.

Now, Sir, how many District Magistrates are there in Travancore? We have about four or five; one in Trivandrum, another in Quilon, a third in Kottayam, and there is also the Devicolum Commissioner.

For the whole of Travancore we have only got these Magistrates. If a child marriage takes place in Paravur, the prosecution will have to be brought before the District Magistrate of Kottayam. Whatever be the law, however strongly or effectively you pass the law I am sure that for sometimes there will be a great reluctance on the part of people to come as informers in such cases. Unless the law compels a person to disclose the information of which he is in possession, in 99 cases out of 100, my view is, very few persons will take up the role of prosecutors. Honestly I may tell you, Sir, that if after the passing of these regulations a child marriage is going to take place just near my house whatever may be my views with respect to the disadvantages of a child marriage and the necessity for this legislation, even if I feel convinced that child marriage is a social evil and the sooner it is got rid of, the better, I am not going to take up the roll of a prosecutor. This mentality of mind is not peculiar only to me. I am sure it is common to many people. Therefore if the prosecution is brought before the District Magistrate, there will be the dirth of informers and secondly there will be the difficulty of placing the matter before the District Magistrate and the fore prosecutions may be rare. I do not want to keep these possibilities from the notice of the House. But if the matter could be taken before a first Class Magistrate, it is quite possible that there is more facility for prosecution. In the case of a new law of this description, the question is to what length are we to go. As I said the other day, there is the Juveniles' Smoking Regulation. Are not the juveniles smoking in spite of the regulation? Can we say that we have not seen any juvenile smoking after the passing the Regulation, but how many prosecutions have taken place till now? There is nothing wrong in these matters. These are not offences involving moral turpitude. If a child marriage takes place there is no duty cast upon you to bring it before a Magistrate and the heavens are not going to come down on you because you have not brought it before a Magistrate. Being an experimental measure, being something which is directed first against a particular community, even if there are certain lapses, we have to see the reaction of the community to this piece of legislation.

[Mr. E. Subramonia Aiyar]

Further we should not create a profession for the unemployed. I dare say, Sir, it will not be long before an association of informers is formed of the unemployed people, because it is an easy matter. They will take the part of informers and they will be hailed as reformers. Even if a marriage has taken place and it was not a child marriage, these people can go and put in a complaint. So, much facility should not be given for prosecution. We should weigh the advantages and disadvantages in the matter of giving facility for prosecution. If any person has got a grudge against me and he wants to spite, certainly action may be taken against me at his instance even if the marriage performed in my house is not a child marriage and once the prosecution has been launched against me, certainly I must appear before the District Magistrate and probably engage a lawyer to defend me. A prosecution before a District Magistrate is attended with certain difficulties; even then, it is better that such matters do come before an officer of superior status. So, it is this aspect of the matter which makes me question the necessity of this amendment. From a purely theoretical point of view it is indifferent to me whether the offence is tried by a District Magistrate or a Magistrate of the First Class. But if you take the background of this procedure, if you pay heed to the ideas which go for the passing of this law, then you will see, as I have said, that it is not an ordinary criminal law, that you should not treat it in that category and that you should give it a higher status and a better atmosphere. What harm is there in the District Magistrate trying it? As I said, if later on it is found that there is a plethora of cases on the file of the District Magistrates and that justice is suffering, certainly we are here, and if we are not here, others will be here in our places, and certainly they will be equally interested if not more, they will be equally zealous if not more, in seeing that every community in Travancore has got a normal healthy development. Sir, with these words, I oppose the amendment.

MR. C. JEBAMONY NADAR: Sir, I am inclined to support the amendment in spite of the learned speeches of my honourable friends, to the contrary. People like myself who have not been judges always think that judges have what is called "a judicial frame of mind."

MR. T. C. KESAVA PILLAI: May I know whether the honourable member was not a Panchayat Court Judge?

MR. C. JEBAMONY NADAR: I meant a judge in the technical sense. Let me say then that we always think that judges possess a judicial frame of mind. If any officer is wanting in such a frame of mind, certainly he is not fit for a judge's place. We take it also that judges are not influenced by any extra judicial circumstances, by their having children, grand-children, great-grand-children, by their family and such things, as hinted by one member. By law, at any event, these matters should not be taken into consideration by a judge. Hence the arguments directed against a First Class Magistrate on these grounds are unacceptable.

MR. E. SUBRAMONIA AIYAR : Is the honourable member aware that there are decisions of judges which will always be coloured by their views upon social life, ethics and the rest of it.

MR. C. JEBAMONY NADAR : If so, it shows that our judicial system is bad and that we must change it. Whatever that may be, we must take it that all classes of Magistrates are gentlemen who will not be influenced by these circumstances. Hence in the matter under discussion I do not see any reason why there should be such vehement opposition against First Class Magistrates in preference to District Magistrates who by their mere grade are not to be credited with superior talents. As the criminal procedure code stands, the First Class Magistrate is of the highest class having original jurisdiction to try criminal cases of various kinds. He is empowered by existing penal law to try offences relating to marriage and religion. This is also a case of marriage.

MR. P. S. NILAKANTA AIYAR : Is the honourable member aware that offences of bigamy are being tried only by the Sessions Court and not even by District Magistrate?

MR. C. JEBAMONY NADAR : I stand corrected to that extent. Let me say then that most of the offences are triable by a First Class Magistrate. So, in a simple matter like this I believe that a First Class Magistrate should be and would be competent to try. Under the Penal Code, he can pass a sentence of two years imprisonment, but here it is only one month. Why then suspect him? It is a simple matter which could easily be ascertained as the factum of marriage cannot be a complicated question of fact. In India the amendment has been made evidently because that was found necessary. The Saradha Act there was in force for some time without the amendment. Then it was found that the change was necessary. Thus it is the lesson of experience in the adjacent territory. Why Can't we accept it? Very often, we do follow the precedents in British India and other countries. Why should we depart in this particular case? When it does not suit a lawyer he might say foreign authorities are not binding. But a legislature is not to be one-sided.

Again, unless this amendment is supported, I think we are lowering the status of our District Magistrates, because in British India, officers of the status of First Class Magistrates have been found to be competent to try such offences. Do we mean that the status of our District Magistrates is equal only to that of a First Class Magistrate in British India? Correct decision is not the monopoly of any grade of officers. It depends upon individual merits rather than their grade. Against the decision of our First Class Magistrate appeals lie to the Sessions Court. Such matters then go up to the High Court. The High Court sets aside the order of the Sessions Court and restores that of the First Class Magistrate. Does that show the Sessions Judges have a status inferior to that of the Magistrate? The Legislature has already decided against child marriage, by accepting the general principle of the Bill penalising

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certain acts. It is therefore necessary that every facility is afforded to the public to bring before courts complaints of any offence if and when committed, against the provisions of the Bill. If the District Magistrate alone is to try this offence there would be practical difficulties. Take the case of a child marriage performed in Aramboly, sixty miles away from the Headquarters of the Trivandrum District Magistrate. One may not be inclined to come all the distance to Trivandrum to launch a prosecution. Again, consider the cost of bringing, say twenty or thirty witnesses to Trivandrum from Aramboly. These would be real difficulties which would discourage complaints. And thus an offence committed against a special enactment passed by the legislature may go unnoticed and unpunished. Once we pass a law, we should see that it is respected by all and if anybody infringes any provision, proper steps should be taken and for this purpose we should provide for every legitimate convenience, else, the law might become a dead letter. That being so, I would submit that if a matter like this is to be dealt with by a District Magistrate only, there is the possibility of many deliberate and wilful offenders defying the law with impunity which may be an inducement to many others to set at naught all our labours on the floor of this House. It is therefore necessary to invest our first First Class Magistrates with jurisdiction to try offence under this enactment. As a *via media* course and as a matter of compromise I would even suggest to retain the words "District Magistrate" and add "or a Magistrate of the First Class". But however, as it is a matter for the honourable mover I would stop at that. Even as the amendment stands, I see no reason to oppose it.

It was said that the Select Committee did not suggest this amendment because they did not think it proper to accept the change in British India. I do not see the force of this argument also. If the Select Committee did not want the first class Magistrate to exercise jurisdiction in this matter they would not have agreed to clause 9. For under section 9 an enquiry comes in and that by a Magistrate of the First Class. The reason why the Select Committee retain the expression "District Magistrate" is perhaps due to the special power of enquiry conferred on a First Class Magistrate by Section 9. It is very seldom that a District Magistrate himself tries original cases. He directs his subordinate to do so even when he is directly approached with complaints. Further as the section contemplates a regular trial better justice could be expected of a Magistrate of the first class who is mostly a trial Magistrate, actually and regularly doing that business.

MR. E. SUBRAMONIA AIYAR : Is it the member's view that a First Class Magistrate is competent to try the offences involved in section 9?

MR. C. JEBAMONY NADAR : It is enquiry, Sir. I mean that if for enquiry a First Class Magistrate is trusted, why not the same officer be empowered to try? Of course there is difference between an enquiry and a trial. In a trial the parties are present in court and there is the right of cross examination. Enquiry in section 9 does not include these.

Thus that a first class Magistrate has to play a prominent part in dealing with offences under the Bill even as it stands, is un-disputable.

MR. K. R. RAMASUBBA SASTRI : Is it not a fact that though a case is sent for enquiry by a District Magistrate it is again committed to a court of sessions to be tried again?

MR. C. JEBAMONY NADAR : Yes, if it is a case of preliminary enquiry in a sessions case and not in other enquiries.

MR. K. R. RAMASUBBA SASTRI : Therefore, does it not show that an enquiry cannot be held in what is called a blind alley?

MR. C. JEBAMONY NADAR : My point is that the enquiry in section 9 is similar to the enquiry under section 180 Criminal Procedure code and not "the preliminary enquiry". Most of our First Class Magistrates are also exercising appellate jurisdiction. We thus trust them to deal with matters of serious consequences. In a case of child marriage no religious question could arise. So far as custom is concerned it would be foreign to the enquiry. It is only a question of reading and understanding the plain section in this Bill which is clear enough. It is clear therefore that for the purpose of this section, a Magistrate of the First Class can have no difficulty. Again the District Magistrate is an executive officer, who has to be in camp often. If it be the Trivandrum District Magistrate, on one day he will be at Cape, another day at Thuckalay, and a third day at Attingal and so forth. The newly married boy and girl will have to appear in court on every day of trial. Why exhibit these poor beings throughout the Division when there is a never moving first class court. The same fate awaits the parties and witnesses as well. Let us avoid all these unnecessary difficulties. My point, therefore, is that the District Magistrate should not exclusively be invested with the power to try cases arising under this section. Hence, I support the amendment.

MR. T. C. KESAVA PILLAI : In opposing the motion, I have to say one word. First Class Magistrates are Stationary Magistrates. District Magistrates are moving Magistrates and therefore many cases do not enter their file. Under various Acts, they have got certain duties to perform. In the case of child marriages, cases should be tried by experienced officers only. In marriage disputes, it may be necessary that the opinion of many Sastris may be required. They have to be put as witnesses to incidents which might have occurred some months back. No documentary evidence is possible. Questions of fact have to be dealt with. Such things should be dealt with by responsible and experienced Magistrates only. Moreover, if the provision says that a District Magistrate shall deal with the case, it is open to him to send that case for trial by a Magistrate of the First Class. Further, District Magistrates have to go on camps during *jan alandy* work. They take place on appointed days. No difficulty is caused to trial of cases on that score. For all these reasons, it is better that the cases arising in child marriage are tried by District Magistrates only.

MR. P. S. NILAKANTA AIYAR: I oppose the amendment. Mr. C. Jebamony Nadar stated that there is some verbal inconsistency in the clause as it is. Section 7 deals with jurisdiction under this Act. One of the important offences newly created now should not be left in the hands of First Class Magistrates for trial. The necessity for this cannot be denied.

In British India, we have got only one or two Magistrates having First Class powers in each district. In the Tinnevely District there are only two First Class Magistrates, called Sub-Divisional Magistrates, in Tuticorin and Sermadevi. Here in Travancore there are comparatively many First Class Magistrates. The only question is whether they are men of sufficient experience, to try these new cases. It cannot be said that all these First Class Magistrates are experienced men capable of trying such cases. We want experienced men who will be able to appreciate the difficulties of the parents. As pointed out by the speaker in deciding the quantum of punishment, many circumstances should weigh with them. In Travancore we have new recruits among the First Class Magistrates, inexperienced and unsympathetic men, who cannot appreciate the religious views of the parents. If we go before a Magistrate who is given First Class powers the novelty of the offence and the importance of the case may not weigh with him. He may say "the law provides such and such a sentence and so I punish him accordingly". It is only in the original court that we can generally expect leniency in the matter of sentence. These offences are to be tried for the first time in Travancore and responsible men should be posted to try such cases. The mover of the amendment said that on almost all days the District Magistrates will be out on circuit and so, will be not available to try these cases. So far as District Magistrates in Travancore are concerned, they have, no doubt, some revenue work to attend to and also *Jamabandi* work. Though they have powers invested under the Criminal Procedure Code to try cases, they do not generally exercise it. They are competent to try calendar cases. But it is only in very exceptional cases that they try such cases. Generally they are not trying any cases at all either original or appellate. Why not at least give them this work and tell them that it shall be attended to by them and none else? Although the Sarada Act was passed in 1929 in British India, if we take statistics we will find that there are not many cases instituted in British India. As a matter of fact, they are very few and far between. So, that should, more or less, be the case here also. If the District Magistrates go out on circuit they should allot some days on headquarters for these cases. They can attend to them when they are in headquarters or post them to places within their jurisdictions where the parties reside so that the reasons stated by the mover do not hold water. The Sarada Act has been working there for nearly ten years. They do not find any difficulty there. There is no complaint that because these powers are given to only District Magistrates people experience great difficulty.

The next reason that I would urge is, what is the nature of the offence they have to try and what are the principal consequences that would follow by the exercise of the very large discretion vested in

these Magistrates. In applying the various provisions of this Act we find that they will have to consider various aspects. Those various aspects would receive better consideration in the hands of an experienced man. For example, the question may arise as to who is the person in charge of a minor, what should be the quantum of punishment in case of each, what are the different acts which they have committed in order to bring them within the clutches of the law. These are some of the important facts to be determined by the Magistrate. These are difficulties which are not easily appreciated, especially when the offences are to be committed for the first time. It requires experienced men to appreciate these facts. Experience and status go a great way in properly deciding about the liability for the offence, the nature of the punishment etc.

The mover of the bill has given notice of an amendment that an injunction may be issued if a marriage against this law is suspected to take place. We find in this world people of all kinds, honest and dishonest, innocent and mischievous. Suppose a marriage is fixed on a particular day. Any man mischievously inclined could just apply to the Magistrate and get an injunction just the previous day or even a few hours before the *muhurtam* saying that the girl has not completed the 14 years of age, though as a matter of fact she is over 14. The parent of the girl might have incurred a lot of money as expenses. The effect of such injunction will be more or less disastrous. Such wide powers are to be given to the Magistrates. It requires very careful handling. No doubt, the amendment says that notice is necessary. But we know how these notices are served. Notice may be returned saying that the man is not in the place or that he refuses to accept it. As I said before, the results of the exercise of the powers are very great. We can more or less imagine the difficulties in such cases. A marriage has been arranged. A number of invitations have been sent round. Much money has been spent for the erection of the pandal, feasting and the like. Suppose on the previous day a complaint is launched that the girl has not completed the age of 14 and the parties are not allowed to perform the marriage. Power is given to the Magistrate to stop such marriages. I think the Civil List will show that the number of First Class Magistrates is greater than the number of second class Magistrates. It is therefore of the utmost importance that only the Magistrates of the highest class should be allowed to try these cases. Analogous cases under bigamy are being tried only by sessions Judges.

MR. PUTHUPALLI S. KRISHNA PILLAI: May I know the maximum punishment awarded for bigamy?

MR. P. S. NILAKANTA AIYAR: The Legal Remembrancer to Government ought to know it better.

MR. PUTHUPALLI S. KRISHNA PILLAI: May I know whether cases for bigamy are tried by First Class Magistrates?

MR. P. S. NILAKANTA AIYAR : Sir, I said that there is not much difference in the importance of the cases to be tried under this Act, from other bigamy cases. It is quite different from other matrimonial cases like adultery, enticing a married woman etc. It may be that the punishment that is awarded is less on account of the novelty of the offence etc., but the question is as to who should try the case. The punishment under this Act, regulation may be light. Moreover we are not accustomed to such offences. Then again one argument which was advanced by one of my honourable friends is about the presence of the parties and the taking of statements and all that. I am not able to appreciate the difficulties raised by my honourable friend. If a man complains about an offence it is his duty to make all the necessary statements in writing or orally in that behalf. As regards the parties who contract a marriage I don't think that to take statements from them is necessary at all. Even the case may be allowed to proceed without their presence. In any case it is not an insurmountable difficulty. In a trial there are many things through trivial still great. In the course of a trial it is a matter for the discretion of the Magistrate to allow a seat to the accused. And it is only from Magistrates of the highest class that we can expect the best possible exercise of this discretion. Such courtesies cannot be expected from Junior Magistrates who are generally 20 or 35 years of age. In their eyes all offenders in the eye of the law are alike. Here it is not an offence involving moral turpitude. If at all marriages of children are contracted it is not done for the fun of it. The parents do it because of their religious conviction. In fact all possible considerations must be shown to the accused in this case. The subordinate magistrates are not able to appreciate the difference between the various offences in determining the moral turpitude involved. They are always to see that all offenders of law are placed on the dock. There is a very recent case tried by the District Magistrate here which subsequently came up before the High Court the accused was not given a seat by the District Magistrate. But in the High Court he was offered a seat. Another matter of detail is that the presiding Magistrate may wait till the seat is asked for. These things though too small would show the extent of the jurisdiction of the presiding officers and the manner in which the offenders are treated in courts.

MR. PUTHUPALLI S. KRISHNA PILLAI : Does the honourable member expect the District Magistrate to offer a seat without a seat being asked for?

MR. P. S. NILAKANTA AIYAR : The High Court definitely says that discretion in the matter can be exercised *suo motto* by the presiding officer. And that is why I say that more experienced men can better use their discretion in this matter than the ordinary junior Magistrates. Then one of my previous speakers referred to an enquiry which may be ordered by a First Class Magistrate as a check upon haphazard prosecutions. My answer is that there is nothing to prevent him from straight away trying the case. The enquiry to see whether there is a *prima facie* case, may or may not be availed of.

MR. E. SUBRAMONIA AIYAR: Does Section 9 vest a Magistrate of the First Class with a jurisdiction to try a case, to send the case to the District Magistrate who directed him to make an enquiry?

MR. P. S. NILAKANTA AIYAR: The First class Magistrate should make enquiries and collect evidence and then send his report to the District Magistrate saying whether the offence was committed and whether the offender can be prosecuted. His duty must be just like a police officer who makes enquiry and reports to his superiors. The Magistrate's work is only a sort of preliminary work before the trial proceeds and the ultimate power is to be given to the District Magistrate to try and decide the cases.

The effect of Clause 9 is rather serious. Probably there may be two opinions on the matter. As regards the burden of proof it is for the offender to produce evidence of want of negligence, in the case of a parent, etc. Before a subordinate Magistrate who is invested duly with the powers to try these cases, it will be very difficult for the accused to prove his innocence, so far as these offences are concerned. The District Magistrates will and should find time to try these cases, as they are the most lightly worked officers in the State. Judging from the experience of what we saw in British India, we find that cases of this kind are very few in number. Here also the case will be similar. Before we have got any experience in the matter it is too soon to see whether the District Magistrate would find it difficult to try these cases or not. In Travancore there are three or four District Magistrates.

[President occupied the chair at 3'58 P. M.]

MR. P. S. NILAKANTA AIYAR: Sir the point that I was stressing is whether the District Magistrate alone should try the cases or the Magistrates with First class powers should also be invested with powers to try them.

PRESIDENT: Are we still on First class Magistrates?

MR. P. S. NILAKANTA AIYAR: Yes sir, we are. Unlike in British India where we have only a very few responsible and experienced Sub-Divisional Magistrates in each District (corresponding to our First class Magistrates) we have got here more first class Magistrates, I mean as compared with the area and population of the district. Whatever that be, my submission is that offences under this provision should not be made to be tried by Magistrates lower in rank than that of a District Magistrate.

It is not likely that they would be as experienced as a District Magistrate or experienced in the manner of life generally led by the parties to enable them to appreciate the various points placed before them in respect of the acts which go to constitute the offence, and in fixing the quantum of punishment to be given in each particular case. But so far as District Magistrates are concerned, they come as District Magistrates only towards the end of their career, at a ripe and experienced age.

MR. N. NARAYANA KURUP: May I know whether the member is in order in repeating the very same argument?

MR. P. S. NILAKANTA AIYAR: What I said just now was that in British India, in a district, there are only two or three first class magistrates. I said that, here, when a magistrate is appointed he gets very soon the first class powers so that most of the magistrates have here first class powers too soon. But this is not the case in British India. I therefore say that apart from whatever view the members may take about the necessity of this legislation, and the burden of proof, the question of trial by any class of magistrates has to be decided independently of the above considerations.

SRIMATI T. NARAYANI AMMA: Sir, the honourable member Mr. Nilakanta Aiyar was saying that the Sarada Act had been working in British India for the last ten years and yet there was no necessity felt for amending this clause. For the information of the house I may point out that, this particular clause has been amended by Mr. B. Das very recently in British India and it has been passed in the Central Legislative Assembly in March 1938. This amendment stands as amendment to clause 8 in Mr. B. Das's Bill. I have got a copy of the Bill. The particular clause in question reads thus :

"In section 8 of the said Act for the words" "District Magistrate" the words "Magistrate of the First Class" shall be substituted.

Sir, my object in moving this amendment is to bring this Bill into line with the British Indian Legislation. I therefore, request the House to accept the amendment.

PRESIDENT : The motion before the House is that in Clause 7, substitute the words "Magistrate of the First Class" for the words "District Magistrate."

The motion was put to vote and declared carried.

The question whether Clause 7 stands part of the Bill was next put to vote and declared carried.

Clause 7, was added to the Bill.

Clause 8.

SRIMATI T. NARAYANI AMMA: Sir, I beg to move that Clause 8 be substituted by the following :—

"The court may take cognizance of an offence under this Regulation, either upon complaint," made or information laid before it, within one year from the date on which the offence is alleged to have been committed."

Sir, the Bill as revised by the Select Committee provides that the courts can take cognizance of an offence only upon a complaint made to the court. My amendment empowers the Magistrate to take cognizance of the offence either upon complaint made to it or upon information laid before it and a period also has been fixed within which time such action has to be taken. In the working of the Sarada Act, it was only very rarely that complaints against child marriage have been made. After the passing of Mr. B. Das's Amendment Bill we have reports of several offences being taken cognizance of by the court. This new provision mentioned in this amendment will therefore be found to be very useful. It will not lead to any harassment either. The object of the Bill will also be greatly assisted by the amendment. I

may in this connection point out that this and the subsequent amendments that I have given notice of are based on the changes made on the Sarada Act by Mr. B. Das's Bill in March 1938. My original Bill is, as I have pointed out in the statement of objects and reasons, based on the Sarada Act and the object of Das's Act is to make the Sarada Act more effective. Those who had followed the Central Assembly Proceedings would have noted the great enthusiasm with which Mr. Das's Bill was supported there. The Government also supported the Bill and it is stated that the Bill was more a Government measure than of Mr. Das's. In fact, some of the best speeches made on the Bill were those by the Government members. It was even stated by a member of the opposition that it was the adopted child of Sir N. N. Sircar. What I wish to emphasize is how enthusiastically Mr. B. Das's Amendment Bill was supported in the Imperial Assembly. The object of my amendment is to make the Bill as effective as possible in the best interests of society. I therefore beg to move this amendment for the acceptance of the House.

SRIMATHI DEVAKI ANTHARJANAM: I second it.

MR. JOSEPH VITHAYATHIL: I wish to oppose the amendment. The wording of the amendment seems to be defective. The amendment gives room for an interpretation that the court may take cognizance of the offence even if the complaint is made or information is laid after the period mentioned in the clause. Strictly speaking there is no prohibition to take cognizance of the offence even after one year. That is a defect due to the wording of the amendment. The wording of the clause as it is, makes the position clear.

There is another defect also which I should like to point out. As the section stands now, the complaint should be made within six months of the solemnisation of the marriage. There is nothing objectionable there. But if it is amended as suggested it will come to this: the time will run from the date on which the offence is alleged to have been committed and not necessarily from the date of the solemnisation of the marriage. For entertaining the complaint the court need be guided by the allegation about the date of the marriage and need not come to a decision as to the true date of the marriage. It will be better that we do not give room for any ambiguity when we shall have to interpret the section. With regard to the question of time-limit, Sir, I have nothing to say.

MR. E. SUBRAMONIA AIYAR: I oppose the amendment, because I am also the sponsor of an amendment to this clause, I mean the next one. There I wanted to make the section a little more restrictive. That is, I wanted to add the words "by not less than five members of the community to which the parties to the marriage belong." I wanted to have the section like this. "No court shall take cognizance of any offence under this regulation save upon complaint made by not less than five members of the community to which the party to the marriage belongs within six months of the solemnisation of the marriage in respect of which the offence is alleged to have been committed." Now with respect to the wording of the amendment, the addition of the

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words "within six months of the solemnisation of the marriage" to the amendment would remove all apprehension. With respect to the substance of that amendment, certainly, I am powerless against the argument that modification of the law had been brought forward in British India and therefore there is every reason for bringing our law in line with it. The Select Committee had passed its report and that only makes the argument more weak. Probably, if we wait for three years more, some new form the law may take and probably I might then contend that the whole Bill might be given up. The real question in these matters is a certain amount of reconciliation between the interest which sponsored the Bill and the interest which opposed the Bill. In Travancore, at any rate, there was no enquiry or investigation by a committee or otherwise to find out the real sense of the community which will be affected by this legislation. Now, unless we feel convinced that this measure is essential for the preservation of the well being of the community to which it applies, any method by which the operation of this regulation will be restricted is, in the circumstances, I may be permitted to say, very reasonable law. If we examine the scheme of the Penal Code with respect to marital offence or offence relating to married persons, we find generally, I do not say uniformly, that the law is to be set in motion by the aggrieved party. Even in such a serious case as that of bigamy, a prosecution can be started or initiated only upon the complaint of the aggrieved party. The husband or the wife has to move the court against the husband or wife as the case may be. No doubt it may be argued that this is an offence against the marital relationship existing between two individuals, and that therefore it must be left to the option of the aggrieved individual to set the law in motion. But, when you look at the gravity of the offence you will realise that it is not merely the grievance of any particular individual but the State also is interested in the relationship of a husband with his wife, from one point of view. The second marriage is invalid under the law; therefore the consequences are very serious to the State since the children of that marriage are declared illegitimate; and also the ethical value of the institution of marriage is considerably jeopardized. However advanced we may be, however reluctant we may be to respect old traditions and old institutions, it cannot be denied that marriage is a social and ethical institution. It is therefore the duty of every State to preserve the ethical and moral value of marriage. We know that, even in such a case, for the penal law to be set in motion it is not left to any individual in the neighbourhood of the place of offence to set the law in motion; it is not left to an informer of that description to set the law in motion; it is left to either of the spouses.

Then, take the case of adultery. It is a very serious offence; still the prosecution can be initiated only by the aggrieved party. It is therefore clear that legislators in the past have taken the view that even where marital sex expression of an illegal nature is penalised, although there is a good deal of public wrong involved in the offence, the law

could be set in motion only by the parties concerned. Child marriage at all events is an offence certainly of milder description. Nobody dare suggest that child marriage would tend towards laxity of morals. There is nothing unethical behind it. Evils alleged to be flowing out of child marriage are admittedly of a different nature, early widowhood, premature delivery, weakening of the health of the off-springs of the marriage and so on. If there is any sun shine welcome feature in 20th century jurisprudence, it is the high value which is attached to the moral and spiritual well being of human beings rather than to their physical well-being. Therefore, even assuming that child marriage is an evil for the physical well being of the people, even granting for argument's sake all the hundred points in favour of the bill, certainly, nobody dare stand up and say that child marriage is, morally and ethically, bad, and that it would lead to laxity of morals or absence of purity in marital life. It is clear that this Bill has been brought in for the protection of the physical needs of the people. Therefore, when there is no moral turpitude involved in the offence, why should there be this anxiety to see that the law is administered with all relentless vigour? Why should people roam about merely to find out whether there are child marriages conducted or not. It is common knowledge, that, in spite of the provisions of the Penal Code, theft, mischief and even murders are being committed, although the Police and the Magistracy are very vigilant. I should not be misunderstood to suggest by this argument that, when a law is made, I am arguing for loop holes to be provided for in it. But what I am submitting is that, in the case of this enactment alone, some how, an unusual zeal and enthusiasm, great over-anxiety to make the provisions too very severe, is apparent. It is that that I am now arguing against. I too would be very glad if by a wave of the magic wand of the legislature, the country would be rid of its evils. There is no doubt that to some extent we may succeed in placing restraints upon persons who respect the sanctions of society. But a law like this will have absolutely no effect on persons who have no status or position to maintain. But to say that such a precious heritage from British India as this Bill seems to be must be so well preserved that there should not be even the remotest chance of the least important provision of the Bill being slightly deviated from by even the most lawless member of society, is a proposition which, I submit, makes me tremble. After all I ask, why should we have this heritage from British India. In the original section there, it was laid down that the prosecution would lie on complaint by a certain person. My own idea in the matter I have formulated as an amendment which I am going to move. It says that a prosecution should be started only upon a complaint made by five persons belonging to the community to which the parties to the marriage belong. That, I say, is the real test to gauge the sense of the community in regard to this measure. That will show how many out of the 50,000 Brahmins in the State who do not want this Bill really want this measure. What little public opinion there is in support of the Bill is not real public opinion; it is all engineered

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from behind. If all the Brahmins in the State, if all the *Makkathayees* in Travancore, are really anxious to have this reform, I ask, what is the difficulty for five honest people to come forward and demand a prosecution of the person who violates this Bill? Why should it be left to other people? That is the question. I want the real test. Certainly if after a marriage has taken place in the Brahmin community, five Brahmins in the neighbourhood or five Brahmins from any other place come and prefer a complaint, well that at least will give satisfaction to the persons who sponsored the Bill and for the State also that the measure proposed is a proper one. Then there will be justification for us to say "Well, here is a law which gives expression to the sentiments and views of the community largely affected by child marriage". The history of legislation in every country, I dare say with a certain amount of truth, is an expression of class consciousness. Mark the history of legislation in England and in British India. You will find that the majority generally imposes its will upon the minority. When the aristocracy was in power legislation was aristocratic. When capitalism was in power it is the expression of capitalism that we find in legislation. When the proletariat was in power, we find that the views of the proletariat are given expression to in legislation. I appeal to the House to give me an opportunity to convince every one in the house that no honest Brahmin will come forward to prosecute a person for child marriage. I state this in all sincerity. I know the mind of the community. I know what its traditions are. Then why should it be left to persons belonging to any other community to institute a prosecution and interfere with the solidarity of the community? Why not give the members of the community itself this small privilege? If after one year's trial you find that at least half a dozen prosecutions have been initiated by five Brahmins, then you will have the satisfaction that the law is meeting with the approval of the community. If 5 persons express their view that there is necessity for this legislation, then at least there will be consolation for the persons who sponsored the bill that they were in the right as well as for the persons who stoutly oppose the bill that after all they were mistaken. We are prepared to take the defeat calmly and in a sportsman like manner. I am not at all personally interested in the matter but a legislation which does not take into account the views of the community or communities affected by it is no legislation at all. It will be really misusing our powers if we legislate thus. The so called Sarda Act is alive long in British India. It has been made more living by the recent amendment. Probably sometime hence some thing more will be added to it. But so far as Travancore is concerned we are having it for the first time. We are certainly thankful to our friends who wish well of us. They certainly sympathise with us, with the Brahmin men and much more with the Brahmin women and they adopt the policy of *sarve janah sukhino bhavanthu* that all people should be happy, they think that the Brahmin men are

extremely selfish and that the Brahmin women are unable to speak for themselves. The other communities say that they are therefore interested in seeing that no part of society is unhealthy or is having a decreased condition. We are indebted to you very much for that. But it all proceeds upon an assumption that our community appreciates it. If in the view of this house the sense of the Brahmin community is wholly irrelevant to the enactment of this legislation then there is an end of the matter. But if the sense of the community is an important factor in the passing of this law and the sense of that community has not been taken as it should have been taken to remedy that defect, let there be what is called a subsequent test. When child marriages are performed let 5 Brahmins come forward and complain about it. Is there anything strange or peculiar in restricting a prosecution to cases where a prosecution is initiated in a particular way? Certainly my friends will agree with me in the statement that the jurisdiction of a court is the authority to decide matters litigated before it when presented in a formal way for its decision. It is an accepted policy of the law right through that certain matters should be taken cognizance of by a tribunal having jurisdiction only if presented in a formal way. Forms and ceremonies are necessary, whatever we may say about them. They live with us and sometimes out-live us. So what I suggest is only a form. In the Criminal procedure Code you have got sections relating to the taking cognizance of offences only upon complaints, upon sanctions and so on and so forth. It is not left to individuals, for example to bring cases relating to public servants. The complaint against the public servant can be made only with the sanction of Government. In compoundable cases the complaint of the aggrieved party is necessary. Therefore I say in this particular case, since it is a novel measure, if a prosecution is to be started upon a complaint that complaint should proceed from five persons who are members of the community to which the party committing the offence belongs. I am pleading for what I take to be a plea of the right sort.

(The President Vacated the chair at this stage and the Deputy President presided.)

MR. N. RAMAKRISHNA PILLAI: May I know from the member whether this legislation is supposed to be enacted in the interest of the public at large or in the interest of a particular community?

MR. E. SUBRAMONIA AIYAR: As I understand it, Sir, this legislation must be taken to be not in the interest of the public, but the communities seriously affected, and I am keeping that well in view. Therefore it is that I have not mentioned any particular community in my amendment. I was very cautious in regard to that. I said five members of the community to which the parties belong. If there is any other aggrieved community or if any other community does not want this

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law to be passed, the views of that community also may be ascertained. The test is, if a certain community feels that child marriage is after all a thing not to be tolerated, be the reason what it may—some will say reform, opponents like me will say the result of inferiority complex—if my amendment is accepted the truth or otherwise or the validity or otherwise of the contention of either side can be tested. If a particular community feels that this is a very wise piece of legislation certainly the people of that community will come forward and put an end to child marriage. If another community feels that it is an unwanted innovation the result of the prosecution will show that. Therefore I say that not only should the section not be changed at all—the section says “save upon a complaint,” I will go further and say that it must be upon complaint by a few persons of the community to which the party belongs.

MR JOSEPH VITHAYATHIL : Suppose the parties marrying belong to two different communities.

MR E SUBRAMONIA AIYAR : Sir, not that I did not think of that contingency, but when I speak about a community I am not referring to a particular religion.

MR. PUTHUPALLY S. KRISHNA PILLAI : In that case, will not more than five persons be forthcoming from one or other of the two communities?

MR. E. SUBRAMONIA AIYAR : That is hypothetical—Suppose, a Muslim marries a Christian. Under the Mahomedan law such marriages are permitted and are valid. The only restriction is—

MR. C. JEBAMONY NADAR : May I know from the honourable member whether a Christian can marry a Muslim woman?

MR. E. SUBRAMONIA AIYAR : Certainly, my friend does not require any elucidation from me. I can refer him to any book, recent or old, Mahomedan Law. A Muslim can marry a Christian lady but a Muslim lady cannot marry a Christian gentleman. I shall certainly leave it to my friend to verify the accuracy or correctness of my statement. Say a child marriage takes place between a Muslim and a Christian. Certainly the marriage is perfectly valid under the Christian Law.

MR JOSEPH VITHAYATHIL : Does the honourable member know that one Mr. Baker, a Mahomedan has married a Christian?

MR. E. SUBRAMONIA AIYAR : I am aware of that. But apart from that, I know I am perfectly correct in my statement of the law as it stands at present. In such cases you may have five from each community. But such cases will be very rare. If the House requires any modification of my amendment I have not the slightest objection to it. The object of my amendment is to find out whether after all this is such a blessed product of British India which must be given free quarter in our country. That is one aspect of the matter.

About the time limit six months' period was first fixed. I thought that somebody will bring in an amendment that the period shall be three months. Why not one year? In that case it will all be one-sided and it will give room for continued blackmailing.

There should be no scope for black-mailing. Under the Law of Limitation certain complaints should be filed within 30 days of the occurrence. For trespass, assault and other compoundable offences, the period of limitation is 30 days. In that manner, in regard to marriages, six months, time is more than enough. A case may be lodged with the authorities stating that a child marriage has been solemnised. As a matter of fact, the marriage might have been no child marriage at all. Once however the complaint is made, doctors, teachers, purohits, etc., will have to be called in as witnesses if the cases are defended with the result that persons are disturbed from pursuing their even tenor of life. If anything happens like that, it is really unfortunate. The party concerned cannot remain in peace for a period of one year, even though the solemnisation of marriage was proper according to the amendment now proposed in the Bill. It is open to a mischievous man to ask for a huge sum of money from a party and say that if the money was not forthcoming, a complaint may be filed. I prophesy - I seldom do it - this day that such a thing will happen, namely that a mischievous man may drag a party unnecessarily into a court. Why should the period be fixed as one year? Why not the period be put down at six months and the whole trouble over by then? So far as the time limit is concerned, on no account it shall be increased.

Another point is about addition of the words "information laid." There is a section in the Criminal Procedure Code that First Class Magistrates can take up a case on a complaint, police report or information. I am glad that there is no proposal to subject the parties who have participated in a marriage to the inquisitive investigations of the police officer. I am not finding fault with the police officers as a body. They may be only discharging the duty imposed on them. With all the advantages which the modern civilisation has secured to us we are subjected daily to minute interferences by the so-called reformers. Our civilisation is so complex and intricate that on analysis it will be found that the residue of liberty left to you, is practically nil.

Child marriage informers will be generated by this statute. Are we to create a set of pests like this? Why should we create all this difficulty? Why should investigation proceed on information supplied by a mischief maker? It is said that in the British Indian Act this provision was added to the original Act. What if? Fish is good for Bengal Brahmins? Should the South Indian Brahmin be compelled by a fiat of the legislature to eat fish? If there is an earthquake in British India, - God forbid - or say famine pestilences you do not desire that such things should come here. If one gentleman in British

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India thought it fit to add the words "on information laid" so far as that area is concerned, to adopt it here also bespeaks insanity. The so-called reformers brought the Sarda Act. They provided certain stringent provisions in the Bill. Later on they found the result was not as anticipated. It was demonstrated that the law was not socio-physiological. They found that no people came forward to complain. Then they made it more stringent. Whatever success is attained there, are we to succumb to the feelings or the passions which might have given birth to the Sarda Act. Therefore, the real question here is, why should the expression 'on information laid' be inserted? why should we give a handle to a police officer or to any man to take upon the role of a prosecutor? It requires deep consideration whether a man's life should be subjected to interference from all quarters. I am referring to these to show that we should not be carried away by what is happening elsewhere. One great difficulty in us is the utter indifference to think about these matters. After all, one might ask, what is there in all these? We pride in the fact that we are tolerant! I do not call it 'tolerant' but it is 'indifference.' Ever so many small things make up a comprehensive whole. From that you take away the small things one by one and thus what is left finally is nothing. It should not be the aim of legislators to unduly interfere with the rights of a person.

MR. N. RAMAKRISHNA PILLAI: May I know whether the State has any duty to interfere with individuals?

MR. E. SUBRAMONIA AIYAR: No answer from me is needed. The statement of my friend contains the answer thereto. Whatever the Nazis may say and the fascists may say, the State is for us and we are for the State. Its prime duty is towards the individual and towards the nation. The State is not an abstract entity or a myth, or a leviathan. The State has got its duties as well. Therefore, in passing a legislation, it is the primary duty of the State to see that the individuals who form the State are allowed a free, healthy development and have ample power to express themselves in all directions, but not to affect the cohesion and existence of the society as a whole.

Coming to the point where I left, namely, why add "information laid," why not close the doors completely? Let the parents be punished for the existence of children who have contracted child marriage. I grant all that. But, why should prosecution be started on information received from anybody? There is a complaint referred to in Section 10. The Section reads thus:

10. (1) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the court may, for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under Section 227 of the Code of Criminal Procedure and if such security is not furnished within such reasonable time as the court may fix the complaint shall be dismissed.

(ii) A bond taken under this section shall be deemed to be a bond taken under the *Code of Criminal Procedure* and Chapter XL of that Code shall apply accordingly."

The amendment relates to the information laid which is dealt in Section 8. When the Select Committee framed its report, this amendment was not contemplated. Section 8 reads thus:—

"No Court shall cognise of any offence under this Regulation save upon complaint made within six months of the solemnisation of the marriage in respect of which the offence is alleged to have been committed."

DEPUTY PRESIDENT: The House will now rise and meet again at 11'0 clock, the next day.

The House adjourned at 5 P. M.

A. GUNAMONY,

Secretary to the Sri Mula Assembly.